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**UTAH LABOR COMMISSION**

**DAVID A. CONNOR,**

**Petitioner,**

**vs.**

**CITY OF SOUTH SALT LAKE and  
WORKERS COMPENSATION FUND,**

**Respondents.**

**ORDER OF REMAND**

**Case No. 05-0039**

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David A. Connor asks the Utah Labor Commission to review Administrative Law Judge Lima's denial of Mr. Connor's claim for hearing loss benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Connor has been employed by South Salt Lake as a fireman since 1987. He claims workers' compensation benefits for hearing loss allegedly caused by loud noises associated with his employment. After an evidentiary hearing, Judge Lima dismissed Mr. Connor's claim on the grounds that "[Mr. Connor] did not provide evidence of harmful industrial noise at his place of employment evidenced by a professionally controlled sound test . . ." In his motion for review of Judge Lima's decision, Mr. Connor asks the Commission to order that such a "controlled sound test" be conducted.

**DISCUSSION**

As recognized by Judge Lima, Mr. Connor's right to benefits for work-related hearing loss requires evidence that he was exposed at work to noise sufficient to cause the hearing loss. Section 34A-2-503(2) requires that noise exposure be established by a "professionally controlled sound test." Although Mr. Connor has not submitted such a test, § 34A-2-502(1) authorizes the Commission to "conduct tests to determine the intensity of noise at places of employment:" Section 34A-2-502(2) then authorizes an administrative law judge to consider tests conducted by the Commission and any other expert testing "as evidence of harmful industrial noise."

In light of the Commission's authority under § 34A-2-502(1) to conduct the sound tests that are necessary to resolve of Mr. Connor's claim, the Commission remands this matter to Judge Lima with instructions to arrange for qualified individuals with the Commission's Occupational Safety & Health Division to perform the tests. Upon receipt of those test results,

**ORDER OF REMAND**  
**DAVID A. CONNOR**  
**PAGE 2 OF 2**

and the results of any other appropriate testing arranged by the parties themselves, Judge Lima will issue a new decision on the merits of Mr. Connors claim. Judge Lima is also authorized on remand to take such other action as she considers necessary to complete the adjudication of this matter.

**ORDER**

The Commission remands Mr. Connor's claim to Judge Lima for further action consistent with this decision. It is so ordered.

Dated this 23<sup>rd</sup> day of July, 2008.

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Sherrie Hayashi  
Utah Labor Commissioner